

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

RACHELL R. FLORES,

Plaintiff,

vs.

LEWIS AND CLARK COUNTY
SHERIFF'S OFFICE,

Defendants.

No. CV 21-79-H-SEH

ORDER

On October 21, 2021, Plaintiff Rachell Rene Flores ("Plaintiff") moved to proceed in forma pauperis¹ without prepaying fees or costs.

The application will be GRANTED subject to the terms and conditions of this Order.

The Complaint has been screened under 28 U.S.C. §§ 1915(e)(2) and 1915A(a) and 42 U.S.C. § 1997e(c), and has been read liberally.² Reasonable

¹ See Doc. 1.

² See *Sause v. Bauer*, 138 S. Ct. 2561, 2563 (2018).

inferences have been made.³

The Court will not treat Plaintiff more favorably than parties with counsel of record,⁴ is not obliged to assume or fill the role of Plaintiff's counsel, and may not provide personal assistance to Plaintiff.⁵

Plaintiff claims subject matter jurisdiction under 28 U.S.C. § 1331. Federal question jurisdiction is properly pleaded.⁶

Federal jurisdiction cannot be presumed. Federal question jurisdiction, if it exists, must be grounded in 28 U.S.C. § 1331, which provides: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."⁷ Plaintiff, as the party asserting jurisdiction, has the burden of proving such jurisdiction exists.⁸

Plaintiff alleges harm under the Eight and Fourteenth Amendments of the

³ See *McCabe v. Arave*, 827 F.2d 634, 640 n. 6 (9th Cir. 1987) (citing *Traguth v. Zuck*, 710 F.2d 90, 95 (2d Cir. 1983)).

⁴ See *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986).

⁵ *Pliler v. Ford*, 542 U.S. 225, 231 (2004) (quoting *Martinez v. Ct. of Appeal of Cal., Fourth App. Dist.*, 528 U.S. 152, 162 (2000)).

⁶ See Doc. 2 at 3.

⁷ 28 U.S.C. § 1331.

⁸ See *Lew v. Moss*, 797 F.2d 747 (9th Cir. 1986).

United States Constitution.⁹ The alleged harm falls within “civil actions arising under the Constitution” and therefore meets the requirements necessary to establish federal question jurisdiction.¹⁰ However, Plaintiff’s complaint does not properly plead a claim upon which relief can be granted.¹¹

An amended complaint may be filed. It must state: (1) the facts asserted to have been engaged in by the Defendant that will enable the Court to draw reasonable inference that the Defendant is liable for the conduct that Defendant is asserted to have engaged in; (2) that such conduct damaged Plaintiff’s legally protected interests or property rights; and (3) that such conduct gives rise to the claims Plaintiff asserts against the Defendant.¹²

ORDERED:

1. Plaintiff’s Application to Proceed in District Court without Prepaying Fees or Costs is GRANTED.¹³

2. Plaintiff shall have to and including **November 19, 2021**, in which to

⁹ See Doc. 2 at 3.

¹⁰ 28 U.S.C. § 1331.

¹¹ Doc. 2 at 4.


¹² See *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007).

¹³ See Doc. 1.

file an amended complaint that meets and satisfies pleadings requirements necessary and appropriate to state a case within the jurisdiction of this Court.

3. If an appropriate amended complaint is not timely filed, this case will be dismissed.

DATED this 2nd day of November, 2021.



SAM E. HADDON
United States District Judge